

§ 1229.7

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on the redemption or repurchase of capital stock or the declaration or payment of a dividend set forth in section 6 of the Bank Act (12 U.S.C. 1426) or in any other applicable regulation;

(4) Not permit its average total assets in any calendar quarter to exceed its average total assets during the preceding calendar quarter, where such average is calculated based on the total amount of assets held by the Bank for each day in a quarter, unless:

(i) The Director has approved the Bank's capital restoration plan; and

(ii) The Director determines that:

(A) The increase in total assets is consistent with the approved capital restoration plan; and

(B) The ratio of tangible equity to the Bank's total assets is increasing at a rate sufficient to enable the Bank to become adequately capitalized within a reasonable time and consistent with any schedule established in the capital restoration plan; and

(5) Not acquire, directly or indirectly, an equity interest in any operating entity (other than as necessary to enforce a security interest granted to the Bank) nor engage in any new business activity unless:

(i) The Director has approved the Bank's capital restoration plan, the Bank is implementing the capital restoration plan and the Director determines that proposed acquisition or activity will further achievement of the goals set forth in that plan; or

(ii) The Director determines that the proposed acquisition or activity will be consistent with the safe and sound operation of the Bank and will further the Bank's compliance with its risk-based and minimum capital requirements in a reasonable period of time.

(b) *Mandatory reclassification by the Director.* The Director shall reclassify an undercapitalized Bank as significantly undercapitalized if:

(1) The Bank does not submit a capital restoration plan that is substantially in compliance with §1229.11 of this subpart and within the time frame required.

(2) The Director does not approve the capital restoration plan submitted by the Bank; or

(3) The Director determines that the Bank has failed in any material respect

to comply with its approved capital restoration plan or fulfill any schedule for action established by that plan.

(c) *Monitoring.* The Director shall monitor the condition of any undercapitalized Bank and monitor the Bank's compliance with the capital restoration plan and any restrictions imposed under this section or §1229.7 of this subpart. As part of this process, the Director shall review the capital restoration plan and any restrictions or requirements imposed on the undercapitalized Bank to determine whether such plan, restrictions or requirements are consistent with the safe and sound operation of the Bank and will further the Bank's compliance with its risk-based and minimum capital requirements in a reasonable period of time.

[74 FR 5604, Jan. 30, 2009, as amended at 74 FR 38513, Aug. 4, 2009]

§ 1229.7 Discretionary actions applicable to undercapitalized Banks.

(a) *Discretionary safeguards.* The Director may take any action with regard to an undercapitalized Bank that may be taken with regard to a significantly undercapitalized Bank under section 1366 of the Safety and Soundness Act (12 U.S.C. 4616) or §1229.7 or §1229.8 of this subpart if the Director determines that such action is necessary to assure the safe and sound operation of the Bank and the Bank's compliance with its risk-based and minimum capital requirements in a reasonable period of time.

(b) *Procedures.* Before finalizing any action under this section, the Director shall provide a Bank written notice describing the proposed action or actions and an opportunity to submit information that the Bank considers relevant to the Director's decision to take such action in accordance with §1229.12 of this subpart.

§ 1229.8 Mandatory actions applicable to significantly undercapitalized Banks.

A Bank that is classified as significantly undercapitalized:

(a) Shall submit to the Director for approval a capital restoration plan that complies with the requirements and procedures established by §1229.11